

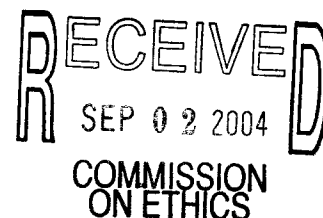
ARRASCADA & ARRASCADA, LTD.
ATTORNEYS AT LAW

LeROY ARRASCADA
JOHN L. ARRASCADA

145 RYLAND STREET
P.O. BOX 425
RENO, NEVADA 89504

TELEPHONE
(775) 329-1118
FAX (775) 329-1253

September 2, 2004



State of Nevada
Commission on Ethics
3476 Executive Pointe Way, Suite 16
Carson City, Nevada 89706-7946

**Re: In the Matter of the Request for Opinion (Ethics
Complaint) concerning the conduct of Kathy Augustine
State Controller Request for Opinion No. 04-47**

COMES NOW, State Controller Kathy Augustine, by and through Counsel John L. Arrascada of the Law Firm of Arrascada and Arrascada, and Dominic P. Gentile, and provide this supplemental response to the Request for Opinion (Ethics Complaint), No. 04-47. This response will address the issues raised by the Executive Director's letter of August 26, 2004. This response incorporates by reference the original reply and any and all documents previously provided to the ethics commission.

The Executive Director's letter of August 26, 2004 states, "As we discussed, the Executive Director's review of the evidence in this case has revealed that the conduct and evidence may potentially trigger violations of NRS 281.481(2) and 281.481(9)." The Executive Director further states, "With such knowledge, please provide any additional evidence or testimony you may have which may refute or mitigate such violations."

NRS 281.481(2) prohibits, in relevant part, a public officer from using "her position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for herself". Unwarranted means without justification or adequate reason." 281.481(2). This Commission's prior opinions provide that, "On its face, NRS 281.481, Subsection 2, reasonably appears to require the Commission to find by a preponderance of the evidence an intention by a public officer to secure or grant a benefit by using his position in government before the Commission may declare the public officer has violated the statute." See opinion, No. 01-11, 01-15, 01-08B.

A review of the evidence and Controller Augustine's statement demonstrate that there was no intent by Controller Augustine to secure or grant a benefit by using her position in Government.

As stated in the initial response, Controller Augustine was and still is under the impression that employees were doing all of the campaign work on a volunteer basis. As stated by Controller Augustine in her interview, "She had a lot of people volunteer"

(p.59) She admitted that Jennifer Normington and Jeannine Coward volunteered from her office. (p.59). Controller Augustine further stated that Sheri Valdez assisted after hours on the campaign. (p.60). Controller Augustine stated, "...the work that was done by a couple of people in my office was purely voluntary." (p.62).

Controller Augustine candidly admitted that she saw Jennifer Normington work on her campaign during work hours. (p.65). She further stated that, "You know, and she wasn't asked, to do it, it was it was... kind of voluntary and like I said she –she would create them on a computer and –and share it with me later." (66).

As Controller Augustine stated, "once again you know I have to reiterate you know nobody was coerced nobody was forced it was strictly um voluntary nobody was reimbursed." These statements were provided during an Attorney General interview ordered by the Attorney General, without notice to Controller Augustine regarding the topic evidence obtained by her former employees and her perception of the work done by her staff in volunteering to work on her campaign.

Controller Augustine's statement provides specific evidence that she did not intend to secure a grant or benefit by using her position in government. Thus, this panel should find that there is not just and sufficient cause to support a violation of NRS 281.481(2).

The same analysis applies to the potential violation of NRS 281.481(9). NRS 281.481(9) states, "A public officer or employee shall not attempt to benefit his personal or financial interest through the influence of a subordinate. Controller Augustine incorporates by reference her original response and the facts stated in this response regarding allegations of influencing a subordinate. The evidence provided expressly supports that subordinates were not influenced by Controller Augustine.

The evidence that demonstrates that Controller Augustine was not influencing subordinates is supported by the fact that two employees she asked to assist on the campaign refused. Their refusal was later accepted by Controller Augustine without repercussion to the employee.

The first employee was Judy Heatherington. Heatherington was asked to do campaign work and refused. Thus, Ms. Augustine did the work on her own.

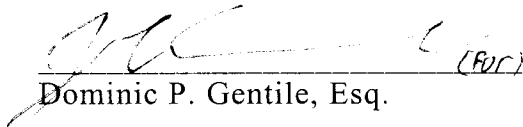
The second example is Jim Wells. Mr. Wells was asked to prepare campaign finance records and he refused believing it was in conflict with his job as a neutral state employee. In an e-mail Controller Augustine accepted his reply and took the matter into her own hands.

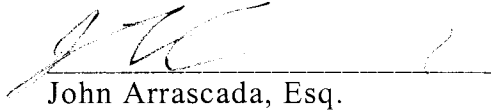
Mr. Wells in his e-mail also supports the fact that Controller Augustine believed any campaign work was voluntary and not done due to undue influence on a subordinate. Mr. Wells' stated, "if you ask me to prepare the report on my own time and I agree

there is not a problem. When I or any other member of your staff volunteer our time to assist you either with your campaign or by attending an event on your behalf, we do it because we want to not because we have to." This statement and evidence demonstrate that Controller Augustine was not attempting to benefit by her influence of a subordinate. Just and sufficient cause does not exist to support a violation of NRS 281.481(9).

Controller Augustine has admitted with explanation that she should have known that her executive secretary was working on her campaign on state time. This admission does not warrant the imposing of further ethical violations. All the allegations arise from the same act or event and, therefore, collectively constitute one violation of the Ethics in Government Law. See, Opinion No. 03-47. The single act or event was Controller Augustine's 2002 campaign. Therefore, it is respectfully submitted that upon review of the evidence this panel find just and sufficient cause for the admission that Controller Augustine should have known that her executive secretary was working on her private campaign on government time in violation of NRS 281,481(7), and that just and sufficient cause does not exist for "the potential triggering of violations of NRS 281.481(2) and 281.481(9).

Sincerely,


Dominic P. Gentile, Esq. (for)


John Arrascada, Esq.